IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5049 OF 2004

Shri Chotubhai K. Inamdar ... Petitioner

v/s

Shri Sadanand D. Barmukh and others ... Respondents

Mr G.S. Godbole for Petitioner.

Mr S.J. Rairkar for Respondent Nos.1 to 4.

CORAM : D.K. DESHMUKH J.

DATE : 29TH JUNE 2005.

P.C. :-

1. Heard learned counsel for both the sides. Perusal of the record shows that the Trial Court granted temporary injunction in favour of the plaintiffs because the defendant did not file his reply to the application. It appears that sufficient time was given by the Trial Court to the defendant to file reply to the application but on 24th February 2003, the defendant again applied for time to file reply on the ground that he was ill but no document supporting his illness was given. An appeal filed by the petitioner against the order of the Trial Court granting temporary injunction has also been rejected. The learned counsel appearing for petitioner submits that the petitioner could not file his reply in time, in any case he is willing to pay substantial cost to the plaintiffs, but the defendant should be given an opportunity to contest the application. After having heard learned counsel appearing for plaintiffs, in my opinion following order would meet the ends of justice.

2. In case the petitioner pays as and by way of cost of this petition an amount of Rs.7,500/- to the plaintiffs and files before the Trial Court his reply to the application for temporary injunction with a document proving that the defendant has paid the amount of cost

to the plaintiffs within a period of four weeks from today, the order granting temporary injunction in favour of the plaintiffs made by the Trial Court and the order passed by the Appeal Court confirming the same shall stand set aside. However, the temporary injunction granted by the Trial Court shall continue to operate till the Trial Court decides the application for temporary injunction filed by the plaintiffs afresh.

3. In case reply as directed above is filed, the Trial Court shall hear the application for temporary injunction afresh and decide it in accordance with law.

4. In case the defendant does not pay the amount of cost as directed above within the period allowed and does not file his reply within the time allowed, then this petition shall be treated as dismissed. It is made clear that this order does not in any way apply to the order passed by the Trial Court rejecting the application filed by the petitioner - defendant for time to file written statement. It is also clarified that in case the defendant makes an application for his written statement being taken on record, that application shall be decided by the Trial Court on its own merits without being influenced by the order of this Court. Petition is disposed off.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Personal Secretary of this Court as true copy.

. Certified copy expedited.